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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6141 OF 2004

Rajmata Sumitraraje Sahakari
Bhadekaru Malaki Grihanirman
Sanstha Limited ... Petitioner

versus

Dinkar Bhujangrao Patil
and others ... Respondents

Mr.V.K.Chaudhary for petitioner.

Ms.P.U.Badadure i/by V.P.Patil for respondent no.1.

Mr.S.P.Thorat for respondent nos.8 and 17.

CORAM : A.S.OKA, J.

DATE : 24th April 2007

PC :

1. Submissions of the learned advocates appearing for the parties were heard yesterday. The petitioner has filed this writ petition under Article 227 of the Constitution of India taking an exception to the judgment and order dated 11th December 2003 passed by the learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai.

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2. The first respondent herein filed a dispute before the Co-operative Court. The dispute was filed under section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the said Act of 1960"). The case of the first respondent in short was that he was one of the promoter members of the petitioner society and he continued to be a member thereafter. His case is that by virtue of his membership he was entitled to allotment of a plot. According to his case, he was entitled to allotment of Plot No.49. However, a resolution was passed on 2nd October 1988 by the Managing Committee of the petitioner by which the said plot was allotted to the second respondent herein. Therefore, the challenge in the dispute was to the said resolution dated 2nd October 1988. A prayer was made for a direction to the petitioner to allot Plot No.49 in favour of first respondent. In the alternative, a prayer was made that in case the petitioner is unable to allot Plot No.49 to the first respondent, a plot of equivalent area be allotted to the first respondent.

3. A reply was filed to the said dispute by the

petitioner. It was disputed in the reply that the first respondent is a member of the society. It was contended that Plot No.49 was never allotted to the first respondent. The learned Judge of the Co-operative Court allowed the dispute filed by the first respondent and declared that the first respondent was a founder member of the petitioner society. The learned Judge of the Co-operative Court found that there were three plots at the disposal of the petitioner society. The learned Judge of the Co-operative Court directed the petitioner society to hand over one of the three plots to the respondent as per his choice.

4. An appeal was preferred by the petitioner which has been decided by the impugned judgment and order dated 11th December 2003. By the impugned judgment and order, the learned Member of the Appellate Court modified the order passed by the Co-operative Court and directed the petitioner to allot one plot to the first respondent, provided, the first respondent pays to the petitioner society the development charges and other incidental charges recovered by the petitioner society from other members who were allotted the other plots. The learned Judge of

the Appellate Court quashed that part of the order of the Co-operative Court by which a choice was given to the first respondent to select one of the three plots.

5. The learned advocate for the petitioner submitted that no plot is available with the petitioner society for allotment to the first respondent. He submitted that the first respondent was never a member of the society. He submitted that in no case the first respondent is entitled to allotment of the plot on the basis of the assurance which was allegedly given even before registration of the petitioner society. Without prejudice to the rights and contentions of the petitioner, he submitted that the first respondent be directed to pay interest on development charges and other incidental charges. I have also heard the submissions of the learned advocate for the first respondent as well as the learned advocate for the eighth and seventeenth respondent.

6. The Courts below have recorded a finding of fact that first respondent was a promoter member and his name appears at serial number 49 in the list of members which was submitted to the

Assistant Registrar of Co-operative Societies, Satara at the time of registration of the petitioner society. The Appellate Court has placed reliance on the oral evidence of the witness examined by the petitioner society. The said witness tried to submit that the ex-Chairman and the first respondent were employees of the same department and, therefore, at the instance of ex-Chairman, the name of the first respondent finds place in the list. However, the said witness admitted that various amounts were shown against the names of members in the list and the said amounts were in fact collected. In the said list which was produced before the Assistant Registrar, against the name of first respondent, payment of share money of Rs.50/-, other expenses of Rs.100/- and price of land of Rs.1,000/- has been shown. The Appellate Court found that the petitioner society was not able to produce any documents to show that at any time the petitioner was called upon to pay any amount. The learned Appellate Court observed that no record relating to membership was available with the petitioner society. The witness examined by the society admitted that the petitioner society has not refunded the amounts which were shown against the name of the first respondent. The Courts below

found that there was no material on record to show that the first respondent ceased to be a member.

7. In the written statement filed by the petitioner, no specific contention has been raised that not a single plot is available with the petitioner society. A finding of fact has been recorded by the Appellate Court that in fact there were three plots available with the petitioner. The Co-operative Court gave a choice of the plots to the first respondent. However, the learned Member of the Appellate Court has set aside that part of the order. As no plea was raised to that effect, it is not possible to accept that contention of the petitioner that no plot is available for allotment with the first respondent society.

8. The learned Member of the Appellate Court has directed that the allotment of the plot will be made to the first respondent subject to first respondent paying the development charges and other incidental charges recovered by the society from other members. If the petitioner society has recovered interest from the other members on the said charges as per the bye-laws, it is

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obvious that the judgment of the Appellate Court permits the petitioner to recover interest from the first respondent.

9. There are concurrent findings of fact recorded by the Courts below. The concurrent findings are based on consideration of oral and documentary evidence on record. There is no perversity in the orders passed by the Courts below. No case is made out for interference in the petition under Article 227 of the Constitution of India. Petition is rejected. No order as to costs.

(A.S.OKA, J.)